12-178

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 312.

THE COUNTY OF PICKENS, STATE OF ALABAMA, PLAINTIFF IN ERROR,

vs.

RICHARD C. DANIEL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED OCTOBER 16, 1877.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the southern district of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Richard C. Daniel, of the city of Memphis, in the State of Tennessee, and Pickens County, one of the counties of the State of Alabama, a manifest error hath happened, to the great damage of the said County of Pickens, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 21st (21*st*) day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

N. W. TRIMBLE,
Clerk of the Circuit Court of the United States
for the Southern District of Alabama.

Allowed by—

W. B. WOODS,
U. S. Circuit Judge.

(Indorsed:) United States circuit court, southern district of Alabama. Filed 21st day of May, 1877. N. W. Trimble, clerk.

b *Notice of appeal to Supreme Court of U. S.*

RICHARD C. DANIEL
vs.
PICKENS COUNTY.

To Richard C. Daniel or Samuel F. Rice, his attorney:

Take notice that you are hereby admonished & cited to be and appear at a Supreme Court of the United States, to be holden at Washington, in the District of Columbia, the second Monday of October next, there to show cause, if any there be, why the judgment in the above entitled cause, heretofore rendered in the circuit court of the United States for the southern district of Alabama, should not be reversed upon writ of error this day granted to said Supreme Court.

Given under my hand this the 18th day of May, in the year of our Lord eighteen hundred & seventy-seven.

W. B. WOODS,
Judge of the Circuit Court of the United States
for the Southern District of Alabama.

c UNITED STATES OF AMERICA,
Southern District of Ala., ss:

Personally appeared before me Henry S. Skaats, who, being duly sworn, says that he served a true copy of the within notice on Samuel F. Rice, attorney, by personally handing the same to him on the 20th day of June, 1877.

HENRY S. SKAATS.

Subscribed and sworn to before me this 20th day of June, 1877.

JNO. H. WALLACE,
U. S. Commissioner So. Dist. of Ala.

(Indorsed:) Richard C. Daniel vs. The County of Pickens. Notice of appeal. United States circuit court, southern district of Alabama. Filed 21st day of May, 1877. N. W. Trimble, clerk.

1 *Complaint.*

No. 533.

UNITED STATES OF AMERICA:
In the circuit court of the United States for the southern district of Alabama, June term, 1876.

Richard C. Daniel, who is a citizen of the State of Tennessee, complains of the County of Pickens, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Alabama, which said corporation is a citizen of the State of Alabama, and of the district aforesaid; and, thereupon, the said plaintiff claims of the said defendant, which is a corporation duly incorporated and treated as such by the laws of the State of Alabama, the sum of five thousand dollars, being the amount due upon and for two hundred and forty-seven coupons, which were attached to fifty of the bonds of said corporation, which said bonds are numbered from one to fifty, both inclusive, to wit, two hundred and forty of said coupons were attached to forty-eight of the said bonds of said corporation, numbered from three to fifty, both inclusive, six of said coupons were attached to one of the bonds
2 of said corporation, numbered one, and one of said coupons was attached to one of the bonds of said corporation, numbered two; each of said bonds being in legal effect and substance as follows, to wit:

No. 1.

UNITED STATES OF AMERICA,
State of Alabama:

500 dollars. 500 dollars.

$500.

Pickens County bond.

Issued in payment of stock of the Selma, Marion and Memphis Railroad Company.

Twenty years.

Know all men by these presents that the county of Pickens, in the

State of Alabama, acknowledges itself indebted and firmly bound to the Selma, Marion and Memphis Railroad Company in the sum of five hundred dollars, which sum the said county promises to pay to the said Selma, Marion and Memphis Railroad Company, or bearer, at the office of the said company, or their [$500] agency in the city of New York, on the first day of November, A. D. 1889, together with interest thereon from the first day of November, 1869, at the rate of eight per cent. per annum, which interest shall be payable semi-annually, on the presentation and delivery of the attached interest coupons, at the office of the
3 said company or their said agency. This bond is issued under and pursuant to an order of the commissioners' court of said Pickens County, made under authority of the constitution of the State of Alabama and the laws of the legislature of the State of Alabama, authorized by a vote of the people of said county at a special election held for the purpose.

In testimony whereof the said county of Pickens has executed this bond by the judge of the commissioners' court of the said county, under the order of said court, signing his name thereto, and by the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court.

This done at the town of Carrollton, county of Pickens aforesaid, this first day of November, 1869

R. R. BOGLE,
Judge of the Commissioners' Court of Pickens Co., Alabama.

B. J. HUGHES,
Clerk of the Commissioners' Court of Pickens Co., Alabama.

[U. S. internal rev. stamp, twenty-five cents.]
[State stamp cancelled, one dollar.]

Attached to each of said bonds were forty coupons, numbered from one to forty, inclusive, the first coupon on each of said bonds
4 being in substance and legal effect as follows:

"CARROLLTON, PICKENS COUNTY, ALABAMA,
"*November 1st, A. D.* 1869.

"The county of Pickens acknowledges to owe ($20) the sum of twenty dollars, payable to bearer on the first day of May, A. D. 1874, at the office of the Selma, Marion and Memphis Railroad Company, or their agency in the city of New York, for six months' interest on bond.

"No. 1.

"B. J. HUGHES,
"*Clerk of the Commissioner's Court of Pickens Co., Alabama.*"

All of the other coupons on said bonds were of the same substance and legal effect, with the exception of the dates of payment and numbers thereof, the first coupon on each of said bonds being payable as aforesaid on the first day of May, 1870, and one of said coupons successively falling due semi-annually thereafter until and up to and including the first day of November, 1889. There are now due on said bonds two hundred and forty-seven coupons, which are unpaid, being five coupons due on each of said bonds, numbered from three to fifty, both in-
5 clusive, six of said coupons on the *the* said bond numbered one, and one coupon on the said bond numbered two. All and each of the said coupons are unpaid, and each of said coupons being for twenty dollars, and were attached to bonds of the said corporation, the

defendant, as above described, and numbered from one to fifty, both inclusive.

The said coupons being numbered to correspond with the numbers on each of said bonds, and which coupons are sued for in this action. The said coupons, which were attached to each of the said bonds of the defendant, numbered from three to fifty, both inclusive, fell due respectively each on the 1st day of May, 1873, the 1st day of November, 1873, the 1st day of May, 1874, the 1st day of November, 1874, and the 1st day of November, 1875; and the said six coupons which were attached to the said bond of the defendant, numbered one, fell due each respectively on the 1st day of May, 1873, on the 1st day of November, 1873, on the 1st day of May, 1874, on the 1st day of November, 1874, on the 1st day of May, 1875, and on the 1st day of November, 1875; and the said one coupon which was attached to the said bond of the defendant, numbered two, fell due on the first day of May, 1873; which said
6 coupons in the aggregate amount to the sum of four thousand nine hundred and forty dollars. The plaintiff avers that each and every one of said coupons, to wit, the said two hundred and forty-seven coupons above described, together with interest thereon from the date at which they severally fell due, are still due and unpaid. And the said plaintiff further avers that he is the bona fide owner and bearer of said two hundred and forty-seven coupons above described, which, together with the said bonds to which they were attached, were executed and put in circulation with the other coupons above mentioned by the said defendant, and which said two hundred and forty-seven coupons above described were purchased by the said plaintiff for value before any of them fell due. The plaintiff avers that at the time the said two hundred and forty-seven coupons above described fell due the Selma, Marion and Memphis Railroad Company had no agency in the city of New York; and he further avers that said defendant had no funds at any agency in the city of New York wherewith to pay said coupons at the time the same fell due. That long before the same fell due
7 and ever since their maturity the said defendant repudiated all liability to pay said coupons, and refused to acknowledge to liability therefor. This suit is brought to recover the amount due on said two hundred and forty-seven coupons hereinabove described, as having fallen due before this suit was commenced, and interest thereon according to their tenor and effect, all of which the defendant hath hitherto and does still wholly fail and refuse to pay, to the damage of the plaintiff ten thousand dollars.

Wherefore he sues.

SAYRE & GRAVES AND
SAMUEL F. RICE,
Plaintiff's Attorneys.

Summons.

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Alabama.

The President of the United States of America to the marshal of said district, greeting:

You are hereby commanded to summon the county of Pickens, a municipal corporation, created, organized, and existing under and by virtue of the laws of the State of Alabama, and which

county of Pickens is a citizen of the State of Alabama, to appear before the hon. circuit court aforesaid, at the place of holding said court, at Mobile, on the first Monday of June next, to answer the complaint of Richard C. Daniel, who is a citizen of the State of Tennessee, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 20th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

Issued the 20th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

Attest:

N. W. TRIMBLE,
Clerk U. S. Circuit Court, Southern District of Alabama.

9 Received in office this 27th day of April, 1876.

GEORGE TURNER,
U. S. Marshal,
Per F. Y. ANDERSON, *Deputy.*

Marshal's return.

Executed by serving copy of the within summons and complaint on the defendant, Thos. G. Williams, judge of the probate court, Pickens County, Ala., this the 3rd day of June, 1876.

GEORGE TURNER,
U. S. Marshal,
By J. N. BLANTON,
Deputy Marshal.

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama. June term, A. D. 1876.

At a regular term of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, convened at the city of Mobile in the United States court-room of the custom-house, on the fifth day of June (being the first Monday of said month), A. D. 1876—present, the honorable William B. Woods, judge presiding—the following proceedings were had:

10 THURSDAY MORNING, *June 8th*, 1876.

Court met pursuant to adjournment; present, the Hon. William B. Woods, judge, presiding.

Order allowing amendment.

RICHARD C. DANIEL
vs.
COUNTY OF PICKENS.

In this cause leave is given the plaintiff to amend his declaration by adding another count and the cause is continued until the next term of the court.

Amendment to complaint.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the southern district of Alabama.

And now comes the said Richard C. Daniel, who is a citizen of the State of Tennessee, and by leave of the court first had and obtained, and amends his complaint, heretofore exhibited in this court on the day of , 1876, against County of Pickens, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Alabama, which said corporation is a citizen of the State of
11 Alabama, and of the district aforesaid, and thereupon the said plaintiff claims of the said defendant, a corporation as aforesaid, the further and additional sum of three thousand dollars, being the amount due upon and for one hundred and fifty coupons, which were attached to twenty of the bonds of said corporation, ten of which said bonds are numbered from eighty-one to ninety, both inclusive, and the remaining ten bonds are numbered respectively as follows, sixty, sixty-one, sixty-four, sixty-five, sixty-eight, sixty-nine, seventy, seventy-two, seventy-nine, and eighty, as follows, to wit, eighty of said coupons were attached to the said bonds of said corporation, numbered from eighty-one to ninety, both inclusive, and seventy of said coupons were attached to the said bonds of said corporation numbered respectively as follows: sixty, sixty-one, sixty-four, sixty-five, sixty-eight, sixty-nine, seventy, seventy-two, seventy-nine, and eighty, each of the said bonds being in legal effect and substance the same as the copy of the bond set out in the original complaint. Attached to each of said bonds were forty coupons numbered from one to forty, inclusive, the first coupon on each of
12 said bonds being in substance and legal effect the same as the copy of the coupon set out in the original complaint. All of the other coupons on said bonds were of the same substance and legal effect, with the exception of the dates of payment thereof, the first coupon on each of said bonds being payable as aforesaid on the first day of May, 1870, and one of said coupons successively falling due semi-annually thereafter, until and up to and including the first day of November, 1889. There are now due on said twenty bonds one hundred and fifty coupons, which are unpaid, being seven coupons due on each of the said bonds, numbered from eighty-one to ninety, both inclusive, and eight coupons due on each of said bonds numbered sixty, sixty-one, sixty-four, sixty-five, sixty-eight, sixty-nine, seventy, seventy-two, seventy-nine, and eighty. All and each of said coupons are unpaid, and each of said coupons being for twenty dollars, and were attached to bonds of said defendant as above in said original complaint described, and numbered as aforesaid, to wit, from eighty-one to ninety, both inclusive, and
13 sixty, sixty-one, sixty-four, sixty-five, sixty-eight, sixty-nine, seventy, seventy-two, seventy-nine, and eighty; the said coupons being numbered to correspond with the numbers on each of said bonds, and which coupons are sued on in this action. The said seven coupons which were attached to each of the said bonds of the defendant, numbered from eighty-one to ninety, both inclusive, fell due respectively on the 1st day of May, 1873, the 1st day of November, 1873, the 1st day of May, 1874, the 1st day of November, 1874, the 1st day of May, 1875, the 1st day of November, 1875, and the 1st day of May, 1876, and the said eight coupons which were attached to each of the said bonds of the de-

fendant, numbered respectively sixty, sixty-one, sixty-four, sixty-five, sixty-eight, sixty-nine, seventy, seventy-two, seventy-nine, and eighty, fell due each respectively on the 1st day of November, 1872, the 1st day of May, 1873, the 1st day of November, 1873, the 1st day of May, 1874, the 1st day November, 1874, the 1st day of May, 1875, the 1st day of November, 1875, and the 1st day of May, 1876, which said coupons amount in the aggregate to three thousand dollars. The said
14 plaintiff avers that each and every one of said coupans, to wit, said one hundred and fifty coupons above described, together with interest thereon from the dates at which they severally fell due, are still due and unpaid.

And the said plaintiff further avers that he is the bona-fide owner and bearer of said one hundred and fifty coupons above described, which, together with the said bonds to which they were attached, were executed and put in circulation, with the other coupons above described, by the said defendant, and which said one hundred and fifty coupons above described were purchased by the plaintiff for value before any of them fell due. The plaintiff avers that at the time the said one hundred and fifty coupons above described fell due the Selma, Marion and Memphis Railroad Company had no agency in the city of New York, and he further avers that said defendant had no funds at any agency in said city of New York wherewith to pay said coupons at the time the same fell due. And plaintiff claims the said defendant the said amount of three thousand dollars due as aforesaid on said one hundred and fifty
15 coupons and interest thereon according to their tenor and effect.

The plaintiff claims of the said defendant the further and additional sum of nine hundred and seventy dollars, being the amount due upon and for ninety-seven coupons, which were attached to fourteen of the bonds of said corporation, which saids bonds are numbered respectively four, five, seven, nine, twelve, thirteen, fourteen, fifteen, sixteen, eighteen, twenty-one, eight, ten, and seventeen, as follows, to wit, eight of said coupons were attached to each of the said bonds of the defendant, numbered as follows, to wit, number four, five, seven, nine, twelve, thirteen, fourteen, and fifteen, and seven of said coupons were attached to each of the said bonds of the defendant, numbered sixteen, eighteen, and twenty-one; three of said coupons were attached to each of the said bonds of the defendant numbered eight and ten respectively, and six of the said coupons were attached to the said bond of the defendant numbered seventeen, each of the said bonds mentioned in this count of the complaint being in legal effect and substance as follows, to wit:

16 UNITED STATES OF AMERICA.

No. .] *State of Alabama, Pickens County bond.* [$250.

Issued in payment of stock of the Selma, Marion and Memphis Railroad Company.

Twenty years.

Know all men by these presents, that the county of Pickens, in the State of Alabama, acknowledges itself indebted and firmly bound to the Selma, Marion and Memphis Railroad Company in the sum of two hundred and fifty dollars, which sum the said county promises to pay to the said Selma, Marion and Memphis Railroad Company or bearer, at the office of the said company or their agency, in the city of New York, in the State of New York, on the first day of November, A. D. 1889,

together with interest thereon from the first day of November, 1869, at the rate of eight per cent. per annum, which interest shall be payable semi-annually, on the presentation and delivery of the attached interest coupons at the office of the said company or their said agency.

This bond is issued under and pursuant to an order of the
17 commissioners' court of said Pickens County, made under the authority of the constitution of the State of Alabama and the laws of the legislature of the State of Alabama, authorized by a vote of the people of said county, at a special election held for the purpose.

$250.00. $500. $250.00.

In testimony whereof the said county of Pickens has executed this bond by the judge of the commissioners' court of the said county, under the order of said court, signing his name thereto; and by the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court.

This done at the town of Carrollton, County of Pickens aforesaid, this 1st day of November, 1869.

R. R. BOGLE,
Judge of the Commissioners' Court of Pickens Co., Alabama.

B. J. HUGHES,
Clerk of the Commissioners' Court of Pickens Co., Alabama.

Attached to each of said bonds were forty coupons, numbered from one to forty inclusive, the first coupon on each of said bonds being in substance and legal effect as follows:

$10.] CARROLLTON, PICKENS COUNTY, ALABAMA,

18 *November 1st, A. D.* 1869.

The county of Pickens acknowledges to owe the sum of ten dollars, payable to bearer on the 1st day of May, 1870, at the office of the *office of the* Selma, Marion and Memphis Railroad Company, or their agency in the city of New York, for six months' interest on bond No. .

B. J. HUGHES,
Clerk of the Commissioners' Court of Pickens Co., Alabama.

All of the other coupons on said bonds mentioned in this count of the complaint were of the same substance and legal effect, with the exception of the dates of payment thereof.

The first coupon on each of said bonds being payable as aforesaid on the 1st day of May, 1870, and one of said coupons successively falling due semi-annually thereafter until, and up to, and including the first day of November, 1889, there are now due on said fourteen bonds ninety-seven coupons which are unpaid, being eight coupons due on each of the said bonds, numbered respectively as follows, to wit, four, five, seven, nine, twelve, thirteen, fourteen, and fifteen, and seven
19 coupons due on each of the said bonds numbered respectively sixteen, eighteen, and twenty-one, and six coupons due on the said bond numbered seventeen, and three coupons due on each of the said bonds numbered respectively eight and ten. All and each of the said coupons are unpaid, and each of said coupons being for ten dollars in

this count of the complaint, and were attached to bonds of the said defendant as above described, and numbered as hereinabove set out in this count of the complaint, the said coupons being numbered to correspond with the numbers on each of the said bonds, and which said coupons are sued for in this action.

The said eight coupons which were attached to each of the said bonds of defendant numbered, respectively, to wit, four, five, seven, nine, twelve, thirteen, fourteen, and fifteen, fell due respectively each as follows, to wit, the 1st day of Nov'r, 1872, the 1st day of May, 1873, the first day of Nov'r, 1873, the 1st day of May, 1874, the 1st day of Nov'r, 1874, the 1st day of May, 1875, the 1st day of November, 1875, the 1st day of May, 1876; the said seven coupons which were attached to each of the said bonds of the defendant numbered respectively as follows, sixteen, eighteen, and twenty-one, fell due each respectively the 1st day of May, 1873, the 1st day of November, 1873, the 1st day of May, 1874, the 1st day of November, 1874, the 1st day of May, 1875, the 1st day of November, 1875, and the 1st day of May, 1876; the said six coupons which were attached to the bond of the defendant, numbered seventeen fell due respectively on the 1st day of May, 1873, the 1st day of November, 1873, the 1st day of May, 1874, the 1st day of November, 1874, the 1st day of May, 1875, and the 1st day of November, 1875; and the three coupons which were attached to each of the said bonds of the defendant numbered respectfully eight and ten fell due each respectively on the 1st day of May, 1875, November, 1875, and May 1st, 1876, all of which said coupons described in this count of the complaint amount in the aggregate to the sum of nine hundred and seventy dollars. The plaintiff avers that each and every one of the said coupons, to wit, the said ninety-seven coupons in this count of the complaint described, together with interest thereon from the dates at which they severally fell due, are still due and unpaid.

21 And the said plaintiff further avers that he is the bona fide owner and holder and bearer of said ninety-seven coupons above described, which, together with the said bonds to which they were attached, were executed and put in circulation with the other coupons above mentioned by the said defendant, and which said ninety-seven coupons were purchased by the plaintiff for value before they or any of them fell due. The plaintiff avers that at the time when the said ninety-seven coupons above described fell due the said Selma, Marion and Memphis Railroad Company had no office or agency in the city of New York, and he further avers that said defendant had no funds at any agency or office in said city of New York wherewith to pay said coupons at the time the same fell due. And ever since the same fell due, long before the same fell due, and at the time they fell due the said defendant repudiated all liability to pay said coupons, and refused to acknowledge any liability therefor. This suit is brought to recover the amount due on said ninety-seven coupons hereinabove in this count described, as well as the amount due on the other said coupons described in

22 the other counts of the complaint and the amended complaint, with interest thereon according to their tenor and effect.

SAYRE & GRAVES AND
SAM'L T. RICE,
Attorneys for Pl'ff.

Filed June 8th, 1876.

N. W. TRIMBLE, *Clerk.*

Demurrer.

In the circuit court of the United States for the southern district of Alabama.

RICHARD C. DANIEL, PLAINTIFF,
vs.
PICKENS COUNTY, DEFENDANTS.

The defendant, by its attorneys, comes and demurs to the plaintiff's complaint as amended, and for cause of demurrer says that it appears by plaintiff's complaint in this cause that the suit is against the County of Pickens, one of the counties of the State of Alabama, and it is not alleged in said complaint that the demand sued upon has ever been presented to the court of county commissioners of said county as
23 provided by the statute of Alabama.

And for further cause of demurrer to plaintiff's said amended complaint defendant says that it does not appear by said complaint that the plaintiff's demand sued upon was, before the bringing of his suit, presented to the court of county commissioners of said county and either disallowed or reduced by said county and refused by said Richard C. Daniel as provided by the statutes of Alabama.

L. M. STONE,
R. H. R. INGE &
G. L. SMITH,
Att'ys for Defendants.

Filed December 28, 1876.

N. W. TRIMBLE, *Clerk.*

Plea No. 1.

RICHARD C. DANIEL, PLAINTIFF,
vs.
PICKENS COUNTY, DEFENDANT.

And for plea in this behalf defendant says that the bonds and cou-
24 pons mentioned and declared on in plaintiff's complaint as amended were given in payment of the pretended subscription by said county of Pickens to the stock of the Selma, Marion and Memphis Railroad Company, and that the only authority of said county of Pickens to subscribe to said stock and to issue said bonds and coupons is found in an act of the general assembly of the State of Alabama, approved December 31st, 1868, entitled "An act to authorize the several counties and towns and cities of the State of Alabama to subscribe to the stock of such railroads throughout the State as they may consider most conducive to their respective interests," and that said pretended bonds and coupons were issued upon proceedings taken by the commissioners' court of said county of Pickens, of which a duly certified transcript is hereto appended and made a part of this plea. And said defendant says that said bonds and coupons were issued under no other authority and by virtue of no other proceedings. Wherefore the defendant says that the said bonds and coupons are not the bonds and coupons of the said county of Pickens.

25 STATE OF ALABAMA,
County of Pickens:

Personally appeared before me, W. G. Robertson, clerk of the circuit court of said county, T. G. Williams, probate judge of said county, who being by me first duly sworn, deposes and says that the matters and things above set forth are true in substance and in fact.

T. G. WILLIAMS,
Judge of Probate Pickens County, Ala.

Subscribed and sworn to before me this the 1st day of January, A. D 1877.

W. G. ROBERTSON,
Circuit Clerk.

Plea No. 2.

And for a further plea in this behalf, defendant says that said pretended coupons declared on and the pretended bonds to which they were attached were issued as set forth in the last preceding plea, numbered one.

And the defendant says that before the pretended subscription by said county of Pickens to the stock of the said Selma, Marion and Memphis Railroad Company, and while the proposition for such subscription was pending before the said qualified electors of said county of Pickens, and to induce the said qualified electors in the said county of Pickens
26 to vote for said then proposed subscription mentioned in said record and made part of plea number one, and also made a part of this plea, the said Selma, Marion and Memphis Railroad Company did, through its officers and agents, make various public speeches and other representations to said qualified electors, whereby it falsely and fraudulently represented to said qualified electors that the proceeds of the bonds and coupons proposed to be issued, as shown by said record, should be solely expended in constructing said railroad in and through said county of Pickens; and by said representations induced the voters of said county to vote for said subscription of stock and issuance of bonds and coupons shown by said record.

Nevertheless, defendant says said bonds or the said money arising therefrom was otherwise wholly expended and applied by said railroad company to other uses, and said railroad has not been in whole or in any part constructed in said county of Pickens, and that said railroad company is wholly insolvent and has ceased to be built, without
27 reaching the said county of Pickens; and the defendant says that the plaintiff before he acquired said coupons mentioned and declared on in plaintiff's complaint had notice that said promises and representations had been made and that said railroad company did not intend to keep or had not kept its said representations and promise, but that said coupons and the bonds to which they belong or the money realized therefrom would be or had been applied or expended for purposes wholly different from constructing said road in said county.

Plea No. 3.

And for further plea in this behalf the defendant pleads the same facts pleaded in the last-above plea numbered 2, with the additional allegation that said coupons declared on were acquired by plaintiff from said railroad company.

Plea No. 4.

And for further plea in this behalf defendant pleads the same facts set forth in his first plea and in the record contained in said plea, and defendant farther says that the plaintiff is not a bona fide pur-
28 chaser for value without notice of the facts set forth in said record and made a part of said first plea, and of this plea, but on the contrary acquired the coupons declared on and the bonds to which they were attached with notice of said facts.

Plea No. 5.

And for further plea in this behalf the defendant pleads the matters set forth in said first plea, and in the record thereto appended, and made a part thereof and of this plea. And defendant farther says that plaintiff is not a bona fide purchaser for value of the coupons by him declared on.

LEWIS M. STONE,
R. H. R. INGE, &
G. L. SMITH,
Attorneys for Defendants.

29 THE STATE OF ALABAMA,
Pickens County.

MARCH 29, 1869.

The court of county commissioners of said county met this day at the office of the judge of probate. Present, Hon. R. R. Bogle, probate judge, presiding; B. J. Hughes, John A. F. Duncan, Elisha Teer, and N. L. Harris, commissioners; and the following orders were made and proceedings had, to wit:

MARCH 30, 1869.

The commissioners' court for Pickens County met pursuant to adjournment.

Now, at this day came James Gibson and other citizens of Pickens County, Alabama, and moved the court here to make subscription in behalf of said Pickens County to the capital stock of the Selma, Marion and Memphis Railroad Company in the sum of one hundred thousand dollars, payable in such installments and at such times as this court may hereafter determine and decree, not exceeding twelve months, and to issue bonds on the faith of said Pickens County for the sum of one hundred thousand dollars, bearing eight per cent. per annum in amounts of from fifty ($50.00) to five hundred ($500.00) dollars each, pay-
30 able at twenty years, with coupons, with the privilege of commencing the liquidation of said bonds at the end of ten years at the option of this court.

And it appearing to the court from an act to the general assembly of Alabama, entitled "An act to amend and revise the general acts of encorporating the Cahaba, Marion and Greensboro' Railroad Company, and to change the name and style of said company," approved Dec'r 31, 1868—see page of the acts 1868, 566—that this court is authorized and empowered to make said subscription for said Pickens County to the said capital stock of said company in the said sum of one hundred thousand dollars, as aforesaid, and payable in the amount and at the time aforesaid, and to issue bonds on the faith of said county, as aforesaid, and to sell said bonds or transfer them according to the tenor of said act, &c.:

It is therefore considered by the court that said motion for said Pickens County to subscribe to the capital stock of said company one hundred thousand dollars be granted, which subscription shall become absolute and binding upon said county in the following manner.

31 It is further ordered by the court that the question whether the said Pickens County shall subscribe one hundred thousand dollars to the capital stock of said company be submitted to the electors of said county by giving thirty days' notice of an election for that purpose to be holden, and of the said amount of stock proposed to be subscribed to said capital stock of said company. And if two-thirds of the electors shall vote in favor thereof then said *said* subscription of one hundred thousand dollars shall become absolute and be held to be binding upon said Pickens County upon the future order and decree of this court, but not otherwise.

And it is ordered that the tickets which shall be cast in favor of the subscription shall have written or printed thereon "railroad"; those opposed, "no railroad."

It is further ordered that a special election on the question submitted above be held on the first Monday of June, 1869, at the several voting precincts of Pickens County, Ala.; and that the judge of pro-

32 bate of said county appoint three inspectors to act at the place of holding the said election in each precinct, *or* list of whose names must be furnished by him to the sheriff of said Pickens County within three days after said appointment, and that the sheriff of said county be and act as the returning officer and required to perform the duties as in general and special elections, and that the judge of probate of said county be required to receive the return of said election said sheriff and the same safely and secur*ity* keep until the special of this court, to be held on the second Monday of June, 1869.

It is ordered that this order be published in the West Alabamian, a newspaper published in said county, together with the notice of election which the sheriff is required to give.

It is further ordered that all questions connected with said subscription and bonds not disposed of be, and they are expressly, reserved for the further consideration and decree of this court.

It is ordered that a copy of this order and decree be sent to

33 Gen. N. B. Forest and another to Green T. Hill and others, a committee appointed at a late meeting in Columbus, Miss.

R. R. BOGLE,
Judge of Probate.
J. A. F. DUNCAN.
B. J. HUGHES.
N. L. HARRIS.
ELISHA TEER.

Court adjourned to meet again on the second Monday of June next.

R. R. BOGLE,
Judge, &c.

THE STATE OF ALABAMA,
Pickens County:

MAY 31, 1869.

The court of county commissioners of said county met this day at the office of the probate judge—present, the Hon. R. R. Bogle, judge, presiding; B. J. Hughes, N. L. Harris, A. F. Duncan, three members of the board of commissioners—and the following proceedings had, to wit:

It is ordered by the court of county commissioners that the time heretofore set for holding an election on the subscription by the people of this county to the Selma and Memphis Railroad be postponed until the survey and location of the said road shall be perfected.

34 Ordered that after such survey and location of said road shall have been made, the judge of probate shall issue notices of said election as provided in the law within 30 days thereafter.

It is ordered and decreed that the sum of one thousand dollars, or so much thereof as may be required, be appropriated by this court to survey and locate said road and warrants issued to Gen'l Minor Merriwether, chief engineer, for such amounts as he may demand from time to time, not to exceed the above amount for survey and services, upon his certified accounts rendered to this court.

It is ordered that Messrs. E. D. Willett & John T. Terry be appointed by this court to correspond with Gen'l N. B. Forrest, president, and the directors of said road, for prop'als to the county court of commissioners on the basis of the general law of the State of Alabama in relation to railroads.

It is ordered that this court do now adjourn.

MAY 31, 1869.

35 THE STATE OF ALABAMA,
Pickens County:

JUNE 28TH, 1869.

The court of county commissioners of said county met this day at the office of the judge of probate—present, Hon. R. R. Bogle, judge of probate, presiding; B. J. Hughes, Elisha Teer, John A. F. Duncan, and N. L. Harris, commissioners—and the following orders were made and proceedings had, to wit:

Motion was made by E. D. Willett, esq., to rescind so much of the former order of this court as order an election as to the question of "sub scription" or "no subscription" under the special law acts of the legislature of Alabama of 1868, page 566, section four of said act, and all former orders of this court in relation to the Memphis and Selma Railroad except the order appropriating one thousand dollars to defray the expenses of a survey through this county. Said motion, after having been read and agreed by counsel, was submitted to a vote of the court of county commissioners, the following commissioners present voting for the motion, viz: B. J. Hughes, Elisha Teer, and John A. F. Duncan.

36 It is therefore ordered and decreed that said motion be adopted, and that all former orders and decrees of this court in relation to the Memphis & Selma Railroad except the order appropriating one thousand dollars for the survey through the county are hereby rescinded, revoked, and annulled.

J. A. Billops moved the court to rescind the former order of this court appropriating one thousand dollars to defray the expenses of a survey through the county, and said motion being submitted to the court is rejected and not allowed, and the judge of probate is ordered to issue a warrant upon the treasurer of the county for the sum of one thousand dollars in conformity to said former order and judgment of this court.

Major E. D. Willett moved the court, in behalf the president and board of directors of the Memphis and Selma Railroad, to submit to a vote of

this county under the general law of Alabama entitled an act to authorize the several counties and towns and cities of the State of Alabama to subscribe to the capital stock of the road, approved
37 Dec'r 31, 1868, and the following was adopted as the order and decree of this court, viz:

Be it remembered that at a special term of the court of county commissioners of Pickens County, in the State of Alabama, begun and held at the court-house thereof at Carrollton, in said Pickens County and the State of Alabama, on Monday, the 28th day of June, A. D. 1869, the following proceedings were had, to wit:

County subscription to capital stock.

In the matter of the Selma, Marion and Memphis Railroad Company.

Now, at this day, came on to be heard the proposal of the president and a majority of the board of directors of the Selma, Marion and Memphis Railroad Company to Pickens County, in said State of Alabama, that said county shall subscribe for and take one hundred thousand dollars of the capital stock of said railroad company at fifty dollars per share, to be paid in the bonds of said county, payable to the said
38 railroad company or bearer, said bonds to be so payable in the sum of one thousand dollars each, and due twenty years after the date thereof, and bearing interest at the rate of eight per cent. per annum from date till paid, with interest coupons attached for interest on each of said bonds at the rate aforesaid, which interest is to be paid semi-annually, the amount of said interest and bonds to be paid as aforesaid, at such times and places as may be agreed upon between the said railroad company and the judge of probate of said county as soon as may be after the acceptance of this proposition by the qualified electors of said county at an election held for that purpose under and by virtue of the provisions of the said act of the legislature of the State of Alabama entitled "An act to authorize the several counties and towns and cities of the State of Alabama to subscribe to the capital stock of such railroads throughout the State as they may consider most conducive to their respective interests," approved Dec'r 31, 1868, which proposal is in writing, respectfully submitted to this court for our action and
39 that of the qualified electors of Pickens County, in the State of Alabama, thereon, and signed by said president and a majority of the directors of said railroad companies, at Marion, in Perry County, in the State of Alabama, on the 4th day of June, 1869, in manner and form following, to wit:

THE SELMA, MARION AND MEMPHIS RAILROAD COMPANY,

(Signed)	By N. B. FORREST,	*Pres.*
"	A. G. MALRY,	"
"	C. C. HUCKABEE,	"
"	JOHN HARPER,	"
"	W. R. BRAIN,	"
"	J. L. PERKINS,	"
"	PETER KING,	"
"	J. W. CRENSHAW.	"

It is therefore ordered by the court that an election be held within sixty days in said Pickens County where and whereby the foregoing proposition of said railroad company be submitted to the qualified electors of said county for their acceptance or rejection.

It is further ordered that the first Tuesday in August, 1869, be appointed for holding said election at the several precincts in said
40 county, and that notice of the terms and amount of the proposed subscription be given by publication of this ordinance in the West Alabamian for thirty days before said election. It is further ordered that after said notice has been given of said election, and of the terms and amount of said proposed subscription, this court do prepare written or printed, or partly written and partly printed, ballots with the word "subscription," and like other ballots with the words "no subscription," thereon, for the use of the voters of said county of Pickens.

It is further ordered that the ordinance heretofore made by this court submitting the question of subscription or no subscription to said railroad company to the qualified voters of said Pickens County, by virtue of an act of the general assembly of Alabama entitled "An act to amend and revise the general incorporating the Cahaba, Marion and Greensboro Railroad Company, and to change the name and style of said company," and the ordinance amendatory thereof, be and the same are revoked and held for naught.

41 It is further ordered that the said written proposal of said railroad company be accepted by the court, filed and recorded, and made a part of this ordinance.

It is further ordered that the ballot printed or written "subscription," when cast in, to be counted in favor of, and those written or printed "no subscription" against the proposition.

That said written president and majority of board of directors, in words and figures following, viz: To the honorable the court of county commissioners of Pickens County, in the State of Alabama: We, the president and a majority of the board of directors of the Selma, Marion and Memphis Railroad Company, in pursuance of the provisions of an act of the legislature of the State of Alabama entitled "An act to authorize the several counties and towns and cities of the State of Alabama to subscribe to the capital stock of such railroads throughout the State as they may consider conducive to their respective inter-
42 ests," approved Dec'r 31, 1868, hereby propose to the said county of Pickens through your honorable court under and by virtue of the said act of the legislature to subscribe for and take one hundred thousand dollars of the capital stock of said railroad company at fifty dollars per share, to be paid in the bonds of said county, payable to the said railroad company or bearer; said bonds to be so payable in the sums of one thousand dollars each and due twenty years after the date thereof, and bearing interest at the rate of eight per cent. per annum from date till paid, with interest-coupons attached for interest on each of said bonds at the rate aforesaid, which interest is to be paid semi-annually, the amount of said interest and bonds to be payable as aforesaid, at such time and places as may be agreed upon between the said railroad company and the judge of probate of said county, as soon as may be after the acceptance of this proposition by the qualified electors of said county at an election held for that purpose under and by virtue of the provisions of the said act of the legislature of the State of Alabama.

43 All of which is respectfully submitted to your honorable court for your action and that of the qualified electors of Pickens County, in the State of Alabama, herein, and is signed by us at Marion,

in Perry County in the State of Alabama, this fourth day of June, in the year 1869.

THE SELMA, MARION AND MEMPHIS RAILROAD COMPANY,

(Signed) By N. B. FORREST, *Pres.*
" A. G. MALRY.
" C. C. HUCKABEE.
" JOHN HARPER.
" W. R. BRAIN.
" J. L. PERKINS.
" PETER KING.
" J. W. CRENSHAW.

It is now ordered that this court now adjourn.
JUNE 28, 1869.

Acts 1868, p. 515, sec. 5.

THE STATE OF ALABAMA,
Pickens County:

Whereas an election was held on Tuesday, the 3d day of August, 1869, in said county, on the proposition submitted by the Selma, Marion and Memphis Railroad Company through the commissioners' court of
44 said county to the qualified electors of said county, whether said Pickens County would subscribe for and take one hundred thousand dollars of the capital stock of said company as set forth in said proposition; which proposition was duly submitted to said qualified electors for their acceptance or rejection:

I, R. B. Bogle, judge of probate of said county, and in my official capacity as such judge under above act, hereby certify that said election was held on Tuesday, the (3rd) third day of August, 1869, in said county, when twelve hundred and twelve (1212) ballots of the qualified electors of said county were cast in favor of the acceptance of the proposition, being written or printed "Subscription," and six hundred and seven (607) ballots were in like manner cast for rejection of said proposition being written or printed "No Subscription."

I therefore, in capacity aforesaid, certify that a majority of the qualified voters of said county voting at said election voted for "Subscription," whereupon the proposition of said company to said county is deemed and held accepted by said county, and as in duty I do hereby so certify and publish.

45 August the 5th, A. D. 1869.

R. R. BOGLE,
Judge of Probate.

COMMISSIONERS' COURT, *August* 16, 1869.

The commissioner's court of the county of Pickens met this day at the court-house of said county—present, Hon. R. R. Bogle, judge of probate, presiding; B. J. Hughes, E. Teer, W. L. Harris, and J. A. F. Duncan, commissioners—and the following proceedings were had, to wit:

In the matter of the Selma, Marion and Memphis Railroad:

It is ordered that the judge of probate is authorized to purchase books and forms for the tax-collectors in his collection of the railroad tax.

Commissioners' court. Ordinance.

Be it remembered that at a regular term of the court of county commissioners of Pickens County, in the State of Alabama, begun and held at the court-house thereof, at Carrollton, in said Pickens County,
46 in the State of Alabama, on Monday, the 16th day of August, 1869, the following proceedings were had, to wit:

In the matter of the Selma, Marion and Memphis Railroad Company.

County subscription to capital stock.

Whereas at the election held in and for said county, on Tuesday, the 3d day of August, 1869, on the proposition of the Selma, Marion and Memphis Railroad Company that said Pickens County should subscribe for and take one hundred thousand dollars of the capital stock of said company at fifty dollars a share, to be paid in bonds of said county payable to the said railroad company or bearer, said bonds to be so payable in the sum of one thousand dollars each and due twenty years after the date thereof and bearing interest at eight per cent. per annum from date till paid, with interest-coupons attached for interest on each of said bonds at the rate aforesaid, which interest is to be paid semi-annually, the amount of said interest and bonds to be paid as aforesaid, at such times and places as may be agreed upon between the said railroad com-
47 pany and the judge of probate of said county as soon as may be after the acceptance of this proposition by the qualified electors of said county, at an election to be held for that purpose under and by virtue of the provisions of an act of the general assembly of Alabama entitled an act to authorize the several counties and towns and cities of the State of Alabama to subscribe to the capital stock of such railroads throughout the State as they may consider most conducive to their respective interests, approved Dec. 31st, 1868.

A majority of the qualified voters of said county voting at the election aforesaid at the time aforesaid voted for subscription, as appears from the certificate of R. R. Bogle, judge of probate of said county, and it appearing that said county is situate upon the line of said railroad hereafter to be located by said company, it is therefore considered that said proposition of said company to said county be and the same is hereby deemed and held accepted by the said county, and that said written proposition, the previous order thereon, and said certificate of said probate judge be made a part of this order; and it is further
48 ordered that this court of county commissioners do make the above subscription voted for as aforesaid and in behalf of said Pickens County to the capital stock of said company in the manner and in the amount set forth in said application, and that this court do deliver to said railroad company in payment of said subscription bonds of the county according to the proposition so made and accepted as aforesaid.

It is further ordered that Gen'l N. B. Forrest be and he is authorized to contract for and superintend the engraving of said bonds and coupons, and to have them made ready for execution and issuance.

It is further ordered that a special tax, to be called a railroad tax, of one per cent. per annum upon the value of the real and personal property in said county be levied, assessed, and collected annually to meet the interest falling due semi-annually on said bonds when issued and to pay the expenses of issuing said bonds in the same manner as is now

required by law for collection of State & county taxes, and the
49 several tax assessors and tax collectors of said county are hereby required to so assess and collect said taxes for the purpose aforesaid under § 8 of said act.

With the consent of said company it is further ordered that fifty thousand dollars of subscription be paid for as aforesaid in bonds of the denomination of two hundred and fifty dollars each, and fifty thousand in bonds of the denomination of one thousand dollars each.

It is further ordered that B. J. Hughes, one of the commissioners of this court, be and he is authorized to sign said bonds as commissioner, and that the same be countersigned by the judge of probate, and that the coupons be signed by such person as they may select.

It is now ordered that this court adjourn to meet on the 3 Monday in September, 1869.

February term, 1870, commissioners' court.

Be it remembered that at a regular term of the commissioners' court of , begun and held for the county of Pickens on the 14th day of February, A. D. 1870—the Hon. R. R. Bogle, judge, presiding;
50 present, Benj. J. Hughes, N. L. Harris, Elisha Terr, J. A. Duncan, comm'rs—the following proceedings were had, to wit:

On motion the reading of the report was suspended, and Gen'l N. B. Forrest and Col. Merriweather, his chief engineer, were introduced to the court in proper person. They exhibited their profiles of the three several routes surveyed through this county, and Gen'l N. B. Forrest announced to the court that the certificate of the Selma, Memphis and Marion Company to Pickens County for $100,000 to the capital stock of said railroad company was then ready for delivery, and presented the same for the inspection of the court, and having deposited the same to be delivered to the judge of probate.

And it being announced that the bonds would soon by ready for delivery in exchange for said certificate, it is ordered that the judge deliver them and receive the certificate.

Be it remembered that at a regular term of the court of county commissioners held in and for said county of Pickens, on the 14th
51 day of August. A. D. 1871, the following proceedings were had, to wit:

In the matter of the people's petition vs. levying a railroad tax for 1871.

It is ordered by the court that no tax for railroad purposes for 1871 , and that all railroad money in the hands of the treasurer remain in his hands until further orders from this court.

THE STATE OF ALABAMA,
Pickens County:

COMM'RS' COURT, *Feb.* 12, 1872.

Be it remembered that at a regular term of the court of county commissioners, begun and held at the court-house of said county on the 2nd Monday in February (12th day), 1872—present, Hon. R. R. Bogle, judge, presiding; Jerome Lewis, esq., R. E. Tweedie, esq., John Sigman, esqr., & W. L. Duncan, associate commissioners—the following proceedings were had, to wit:

It is ordered, adjudged, and decreed by the court that out of the railroad money in the treasury they appropriate the sum of $3,356 41-100 *dollars* to pay to J. B. Tyler on his contract of building the court-house, and that M. L. Stansel, in whose hands said funds are, is hereby
52 authorized so to pay over the same as well as the $300 to B. A. Hudgins.

THE STATE OF ALABAMA,
Pickens County:

Be it remembered that at a special term of the court of county commissioners, begun and held at the court-house of said county on the 18th day of April, A. D. 1873—present, R. B. Bogle, judge, presiding; Jerome Lewis, Wm. L. Duncan, and John Sigman, commissioners—the following proceedings were had, to wit:

On motion of S. M. Meek, att'y and director for Selma, Marion and Memphis Railroad, to assess the tax on the coupon bonds now due, the following proceedings were had: Col. Meek, as such director and attorney, appeared in person before the court and made a formal demand of the court that they make an assessment of taxes for the payment of the interest coupons now due on the bonds of the county in aid of said railroad, and also for the payment of the money heretofore collected on assessments made on account of said road, all of which the court refuses and declines to do.

Court adjourned.

53 JEROME LEWIS,
WM. L. DUNCAN,
JOHN SIGMAN,
Commissioners.

Be it remembered that at a regular term of the court of county commissioners for Pickens County, begun and held at the court-house of said county on the 9th day of February, 1874, being the second Monday in said month—present, Hon. R. B. Bogle, judge; John Sigman, W. L. Duncan, & R. E. Tweedie, esqrs., associate commissioners—the following proceedings were had, to wit:

RAILROAD BONDS.

It is ordered that William Duncan be authorized to give notice by advertisement in the "New York Weekly Herald," a newspaper published in the city of New York, for a term of three weeks, in regard to the bonds of the county of Pickens, in the State of Alabama, issued for and as capital stock in the Selma, Marion and Memphis Railroad, and that the charge of said newspaper for publishing said notice be paid out of any money in the hands of the treasurer of said Pickens County as a preferred claim.

54 THE STATE OF ALABAMA,
Pickens County:

I, T. G. Williams, judge of probate of said county, hereby certify that the foregoing pages from one (1) to twenty-seven (27), inclusive, contain a perfect transcript of the proceedings had in relation to the Selma, Marion and Memphis Railroad as found of record in the minutes of the commissioners' court of Pickens County, Ala.

Given under my hand and official seal at office, at the town of Carrollton, this 14th day of Nov'r, A. D. 1876.

[SEAL.] T. G. WILLIAMS,
Judge of Probate.

[One dollar State stamp cancelled.]

Filed February 6th, 1877.

N. W. TRIMBLE, *Clerk.*

55 Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

TUESDAY MORNING, *February 6th*, 1877.

Court met pursuant to adjournment. Present, the Hon. John Bruce, judge of the district courts of the United States for the State of Alabama, sitting as circuit judge.

Order sustaining demurrer & judgment.

RICHARD C. DANIEL
vs.
THE COUNTY OF PICKENS. } No. 533.

This day came the parties by their attorneys, and the defendant's demurrer to the complaint was overruled by the court. The defendant then filed five several pleas, to each of which the plaintiff duly demurred, and after argument thereon each of these demurrers to said pleas was sustained by the court, and the defendant then declined to plead further.

It is therefore considered by the court that the plaintiff recover of the defendant the sum of ten thousand four hundred and ninety-nine dollars and thirty-five cents, which sum consists of the aggregate
56 principal of the coupons sued on and described in the complaint in this case and the lawful interest on each of said coupons from its maturity to this day.

It is further ordered by the court that the plaintiff recover of the defendant the costs of this suit, and let execution issue accordingly.

57 *Petition for writ of error.*

In the circuit court of the United States for the southern district of Alabama.

RICHARD C. DANIEL
vs.
PICKENS COUNTY. } Petition.

To the honorable the judges of the circuit court of the United States for the southern district of Alabama.

Whereas in the case of Richard C. Daniel against the county of Pickens, one of the counties of the State of Alabama, a judgment in the said circuit court was upon the sixth day of February, 1877, rendered against the said county for the sum of ten thousand four hundred and ninety-nine $\frac{35}{100}$ dollars and costs, and whereas the said county has, through its court of county commissioners, determined to seek a writ of error in said cause,

Now, therefore, your petitioners prays that a writ of error may be allowed to your petitioner from the judgment of said circuit court
58 to the Supreme Court of the United States, that error in said judgment, if any there be, may be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf.

And your petitioners offers to execute its bond with good and sufficient surety to the clerk of the Supreme Court of the United States, to answer to said clerk for any and all costs that may be decreed against it in the premises.

T. G. WILLIAMS,
Probate Judge and ex-Officio the Presiding Officer of the Court of County Commissioners of Pickens County, one of the counties of the State of Alabama.

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the second Monday of October next, on the petitioner's giving bond in the sum of two hundred dollars with good and solvent security conditioned as the law directs.

May 18, 1877.

W. B. WOODS,
U. S. Circuit Judge.

Filed 21st day of May, 1877.

N. W. TRIMBLE,
Clerk.

59 *Bond.*

Know all men by these presents that we, The County of Pickens, one of the counties of the State of Alabama, executing this bond under its county seal, and T. G. Williams, judge of probate, & who has power to execute this bond for said county; and E. D. Willett & W. G. Robertson are held and firmly bound unto the clerk of the Supreme Court of the United States (Daniel W. Middleton) in the full and just sum of two hundred dollars to be paid to the said clerk of the Supreme Court of the United States, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this day of in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas lately at a circuit court held for the southern district of Alabama in a suit depending in said court between Richard C. Daniel, of the city of Memphis, State of Tennessee, and the county of Pickens,
60 one of the counties of the State of Alabama, a judgment for the sum of ten thousand four hundred and ninety-nine $\frac{35}{100}$ dollars and costs of the suit in said circuit court, was rendered against the said county of Pickens, and the said county of Pickens having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Richard C. Daniel citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said county of Pickens shall prosecute its writ of error to effect, and answer

all costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL OF PICKENS CO.]

T. G. WILLIAMS,
Judge of Probate.
E. D. WILLETT.
W. G. ROBERTSON.

Sealed and delivered in presence of—
LEWIS M. STONE.

[One dollar State stamp.]

Approved by—

W. B. WOODS,
U. S. Circuit Judge.

Filed May 21st, 1877.

N. W. TRIMBLE,
Clerk.

61 Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

I, N. W. Trimble, clerk of the court aforesaid, do hereby certify the foregoing to be a true transcript of the record in the case of Richard C. Daniel against the county of Pickens.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court this 17th day of September, A. D. 1877.

[SEAL.]

———— ————.
Clerk.

(Indorsement on cover:) No. 312. The county of Pickens, State of Alabama, pl'ff in error, vs. Richard C. Daniel. S. Alabama, C. C. U. S. Filed 16th October, 1877.

SUPREME COURT U.S.
FILED
APR 21 1880
CLERK

IN THE

Supreme Court of the United States.

In Error to the Circuit Court of the United States, Southern District of Alabama.

COUNTY OF PICKENS
vs.
RICHARD C. DANIEL.

No 312.

COUNTY OF GREENE
vs.
RICHARD C. DANIEL.

No. 313.

Points and Arguments for the Plaintiffs in Error.

JNO. T. MORGAN,
For Plaintiffs in Error.

Globe Job Print.

SUPREME COURT, U.S.
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IN THE

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COUNTY OF PICKENS
vs.
RICHARD C. DANIEL. No 312.

COUNTY OF GREENE
vs.
RICHARD C. DANIEL. No. 313.

Points and Arguments for the Plaintiffs in Error.

JNO. T. MORGAN,
For Plaintiffs in Error.

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IN THE

Supreme Court of the United States.

In Error to the Circuit Court of the United States, Southern District of Alabama.

COUNTY OF PICKENS
vs.
RICHARD C. DANIEL. } No. 312.

COUNTY OF GREENE
vs.
RICHARD C. DANIEL. } No. 313.

Points and Arguments for the Plaintiffs in Error.

These cases being similar in all their prominent features are discussed together.

STATEMENT OF THE CASE.

The suit is upon coupons cut from bonds issued by the county Pickens, Alabama.

The defendant demurred to the plaintiffs' complaint upon the ground that it does not appear from the complaint that the demand sued upon has ever been presented to the court of county commissioners of the county of Pickens, before the suit was brought, as is required by the statutes of Alabama.

This demurrer was overruled by the court.

The defendant then pleaded five separate pleas, to each of which the plaintiff demurred. And the demurrer to each plea was sustained by the court.

The defendant thereupon declined to plead further, and judgment was rendered for the plaintiff.

In the points below submitted the facts relied upon in the several pleas as grounds of defense to the action are stated, so that it is supposed to be unnecessary to recapitulate them here.

It does not appear from the complaint that the demands sued upon were ever presented to the court of County Commissioners of Pickens county (or Greene county) for payment or allowance before this suit was brought, but an excuse for not presenting them is stated, which is that *the defendant* (county) had no office, and no money to pay the coupons when they fell due, either in Memphis or in New York.

The statutes bearing directly on this subject are the Code of Alabama, section 2903, (former edition, 2537,) which is below quoted, and the act of the Alabama Legislature of December 31, 1868, sections 5, 6, and 11, which are as follows:

Code of Ala., § 2903. "No suit can be brought against a county until the claim or demand has been presented within the time limited by section 832 (909) to the court of county commissioners, and either disallowed or reduced by such court, and refused by the party. (2.)"

Act of Alabama Legislature of December 31, 1868.

SEC. 5. *Be it further enacted*, That the returns of said election shall be made by the proper officer to the judge of probate of said county, whose duty it shall be to receive, count, estimate and publish the vote thereof within three days after said election; and in event of death, disability or absence of said judge of probate, then, and in that event, it shall be lawful for the clerk of the circuit court of said county to receive, count, estimate and publish the vote of said county in the same manner as the judge of probate is required to do.

SEC. 6. *Be it further enacted*, That if it is found that a majority of the qualified voters of said county, voting at the

election, shall have voted for "subscription," then, and in that event, upon the announcement of the vote, as hereinbefore provided, the proposition of said company shall be deemed and held to be accepted, and the said court of county commissioners are hereby authorized and required to make the subscription voted for in behalf of said county to the capital stock of said company in the manner and for the amount set forth in said application, and to deliver to the said railroad company, in payment of said subscription, *bonds of the county*, having not less than ten, nor more than twenty years to run, with interest coupons attached for semi-annual interest, payable at such times and places as may be agreed upon between the said railroad company and the said judge of probate of said county. On the issuance of said bonds, certificates to the capital stock, to an amount corresponding with the amount subscribed by said county, shall be placed in the hands of the treasurer of said county.

SEC. 11. *Be it further enacted*, That the bonds provided for in this act shall be of such denomination as the court of county commissioners of said counties and said railroad company may agree upon, but not to be for less than one hundred dollars, nor more than one thousand dollars.

It will be seen that this statute provides that *the judge of probate* (not the court of county commissioners) and the railroad company are to agree upon the time and place where the interest coupons are to be payable. The court of county commissioners are to deliver the bonds, when executed, to the railroad company in payment of the stock subscribed under the authority of the vote of a majority of the qualified voters, etc., etc. By another section of this act *the coupons are receivable for county taxes*.

ASSIGNMENT OF ERRORS.

The circuit court erred, as is manifest by the record—

I. In overruling the demurrer to the plaintiffs' complaint.

II. In sustaining the demurrers to each of the pleas, Nos. 1, 2, 3, 4, and 5, filed by the defendant.

III. In rendering judgment for the plaintiff notwithstanding said several pleas.

ARGUMENT.

No power is conferred by statute, in Alabama, either upon this railroad company, or upon the judge of probate court, to make a contract by which the court of county commissioners of any county can be required to pay any debt or demand otherwise than through a warrant drawn upon the county treasurer. (See Code of Alabama ; *sections cited below.*) And neither of the three named corporations can compel the county treasurer to attend at any place in New York, or at any time, to pay money to the holder of a debt against the county ; or to send money there to pay such debt. Such a contract violates *the general statute law*, which is not repealed or modified by anything in the act of December 31, 1868.

Duties of county treasurer, as defined by law, (code, section 845,) are as follows :

SEC. 845. (926.) "*His duties.* It is the duty of the county treasurer—

"1. To receive and keep the money of his county, and disburse the same according to law.

"2. To register, according to the forms herein prescribed, in well bound books, all claims allowed by the court of county commissioners, and presented to him, designating the date of the allowance, when presented ; the character of the claim, to whom allowed, and the amount.

"3. To number, register and pay all claims in the order in which they are presented, and on payment take a receipt for the same, and mark on the register the word "paid" against the same ; except petit and grand jury certificates, which shall be paid on presentation, without being audited, examined and allowed by the county commissioners, and numbered and registered as other claims, and that all witness certificates in criminal cases shall be paid, as now provided for by law, without being audited, examined and allowed by the court of county commissioners.

"5. To keep a correct account of the receipts and disbursements of all money received by him for the county, according to the forms herein prescribed, charging himself with all moneys so received, of whom, on what account, and the amount; and crediting himself with all payments, stating the number and character of the claim, in whose favor, and the amount."

The duties of the court of county commissioners and of the county treasurer are thus further defined by statute.

ALABAMA CODE.

SEC. 826. (907.) *Court of county commissioners to audit claims on county and register allowed claims.* The court of county commissioners must, in term time, audit all claims against their respective counties; and every claim, or such part thereof as is allowed, must be registered in a book kept for that purpose; and the judge of probate must give the claimant a warrant on the treasury for the amount so allowed. (1.)

SEC. 827. *Claims must be itemized, proved, entered in a book, and filed for reference.* No claim against the county shall be passed upon or allowed by the court of county commissioners, unless it is itemized and sworn to by the claimant, or some person in his behalf having personal knowledge of the facts; and all claims passed upon and allowed, according to this section, must be entered, in the order in which they were allowed, in a book kept for that specific purpose, and filed for future reference, within two weeks after the term at which such allowances were made; and the testimony required in the allowance of a claim must show whether or not any part thereof has been previously paid. (2.)

SEC. 832. (909.) *Claims barred if not presented; minors' claims.* All claims against counties must be presented for allowance within twelve months after the time they accrue or become payable, or the same are barred, unless holden by minors or lunatics, who are allowed twelve months after the removal of such disability. (3.)

SEC. 2903. (2537.) *Suits not to be brought against a county until claim has been presented to the court of county commissioners.* No suit can be brought against a county until the claim or demand has been presented within the time limited by section 832 (909) to the court of county commissioners, and either disallowed or reduced by such court, and refused by the party. (2.)

SEC. 3395. (930.) *When treasurer refuses to pay allowed claims, etc.* If any county treasurer fails, on demand, to pay an allowed claim against the county, when there are funds in the treasury to pay the same, judgment may be obtained against him and his sureties, or any or either of them, having five days' notice, by motion in the name of the party to whom the claim is payable, his legal representatives or assigns, for the amount of the claim, with interest from the demand, ten per cent. damages and costs."

In Palmer vs. Fitts, 51 Ala. Rep., 489, it is held that a county is a political corporation so far as to be under the control of the legislature as to the disposal of revenues in its treasury upon which there is no specific lien.

Treating it, however, as an ordinary corporation, as it is for the purposes of suing and being sued, the question remains is a county in Alabama liable to be sued in any action or in any court upon a claim or demand against it, until the claimant has complied with the statutes of the State in presenting such claim for allowance before the suit is brought.

This question, I believe, can be fully answered upon the authorities.

1. A corporation has no powers except what is given it by its incorporating act, either expressly or by implication. (Downing vs. Mount Washington, &c., Co., 30 N. H., 230; Ocean Co. vs. Sprague Manufacturing Co., 34 Conn., 541; White's Bank vs. Toledo Ins. Co., 12 Ohio St., 601; Ruggles vs. Collier, 43 Mo., 353; People vs. Utica Ins. Co., 15 Johns, 358; Rochester Ins. Co. vs. Martin, 13 Minn., 59; City Council of Montgomery vs. Plank Road Co., 31 Ala., 76.)

And when the manner in which the suit is to be brought is prescribed, if the restriction be constitutional, no other form of action can be maintained, for it can only be sued by virtue of authority conferred by statute. (Lyel vs. St. Clair Co., 3 McLean, 580; Hensaker vs. Borden, 5 Cal., 288; Ward vs. Co. of Hartford, 12 Conn., 404; Schuyler vs. Mercer, 9 Ill., (4 Gilmer) 20; Anderson vs. State, 23 Miss., 459.)

The method prescribed by statute must be strictly pursued. (Rock Island vs. Steele, 31 Ill., 543.)

The statute of Alabama provides that "no suit can be brought against a county until the claim or demand has been presented within the time limited by section 823 (909) to the court of county commissioners, and either disallowed or reduced by such court, and refused by the party." Alabama Code, sec. 2903, (2537.)

This statute has been construed by the highest court of the State. (Marshall County vs. Jackson County, 36 Ala., 613; Covington county vs. Dunklin & Stiner, 52 Ala., 28; Shinbone vs. Randolph County, 56 Ala., 183.)

In the last case the complaint was identical, in legal import, with the one at bar, and the same question was raised by demurrer. (Shinbone vs. Randolph County, supra.)

In the construction of a State statute, the United States Courts will follow the construction of the State Courts. (7 Han., 198; 16 Wal., 678; 2 Blk., 532, 599; 1 Pet., 351; 2 Pet., 675; 4 Pet., 124; 6 Pet., 291; 12 Pet., 32; 2 Otto, 289; 4 Otto, 164, 260; 7 Wal., 812; 4 Wal., 196; 8 Otto, 359.)

The court of county commissioners of a county in Alabama has power to assess taxes upon the people and property in the county only for the purposes and in the manner prescribed by law. The county has no general fund, and no resources for obtaining money except through tax laws enacted by the legislature.

The act of December 3, 1868, gives the power to that court to levy a tax to pay the bonds and coupons issued under

its provisions; but another feature of the statute, of great importance, is that these coupons are receivable *generally in payment of county taxes.* How can the court determine what special taxes are to be levied to pay outstanding coupons until, after the taxes of the county for a given period, are collected, and it is known what portion of coupons then past due have been paid in that way?

Suppose it is true that the court of county commissioners is in default, and that therfore the county is in default, *in omitting to raise money in advance to pay all coupons as they fall due;* that is not the default stated in the declaration. The default of a county must be measured by its powers. Its powers are not to raise a sum by taxation to anticipate an uncertain sum that may be due upon coupons running to maturity, but to raise money by taxation to pay coupons that are outstanding and due. If $5,000 is assessed upon the people of a county as a tax to pay interest coupons that fall due in New York in July, 1880, and if before or after that date the tax collector should receive $4,000 of that sum in payment of general county taxes for the current fiscal and tax year ending December 31, 1880, it would leave the sum of $4,000 in the county treasury taxed out of the people to pay a debt that was paid in another way, and in accordance with the statute laws of the State. It may be (though I do not concede the fact) that these coupons are to be treated as commercial paper in all respects, as to the defenses that may be set up against them by the county, as against a *bona fide* holder; but the question of *the manner in which the liability of a county to suit upon them is to be fixed* is a different matter, not depending upon the commercial law but upon the force and effect of the statutes.

The States have the right to prescribe by statute, when and on what conditions the counties are liable to suit, and if the laws are constitutional, the Federal courts are bound, by the laws of the United States, to give effect to them. If this is not the law the Federal courts can destroy the political control of the States over the counties, and can thus destroy the States.

The greatest embarrassment and danger to society will result if the Federal courts disregard the statutes of the State that prescribe constitutional regulations for ascertaining debts against counties, and for their being presented for payment to designated boards or officers before the counties can be sued upon them.

In considering all questions relating to demands of the sort sued upon in this action, it should be remembered that these debts have in many instances (in most instances indeed) been saddled upon the counties by the majority of qualified voters voting at the election, and that ignorant persons having no property, and who were just admitted to the use of a ballot that very few of them could read, were employed by railroad companies to impose burthens upon other people. It requires all the just powers of the State governments to save the tax-payers from destruction under existing circumstances.

Under the authorties cited the demurrer to the complaint was well taken and should have been sustained.

2. The demurrer to the complaint having been overruled, the defendant pleaded several pleas, to which the plaintiff demurred.

Section 3005, Alabama Code of 1876, provides: "No demurrer in pleading can be allowed, but to matter of substance which the party demurring specifies; and no objection can be taken or allowed which is not distinctly stated in the demurrer."

The demurrer filed to the pleas did not comply with these requirements and were insufficient. (4 Ala., 242; 33 Ala., 110; 34 Ala., 485; 35 Ala., 529, 722; 52 Ala., 456; 58 Ala., 570; 53 Ala., 110.

And the United States courts will follow the construction put upon the statute by the State courts. Authorities supra.

The United States process act requires the pleadings in the United States Court to conform to those in the State Courts. (U. S. Rev. Code, sec. 914, p. 173.)

The demurrers failing to conform to the requirements of the State law of pleadings were insufficient in the United States Court and should have been overruled.

3. But independent of the fact that the demurrers were insufficiently pleaded the pleas were a good defense to the action.

The first plea, verified by affidavit, as required by the laws of Alabama, sets up that the bonds and coupons declared on were given in payment of a pretended subscription to the stock of the Selma, Marion & Memphis Railroad Company, and that the *only* authority to make said subscription, and to issue the said bonds and coupons, is found in the act of the General Assembly of Alabama, approved December 31, 1868, entitled, &c.; and that said pretended bonds were issued upon proceedings taken by the commissioner's court, of which a duly certified transcript is appended, and that therefore said bonds and coupons were not the bonds and coupons of the county.

This act of December 31, 1868, was construed in Chambers County vs. Clews, (21 Wallace, 317,) to authorize, "a subscription and loan by the county *only* upon the basis of a proposition in writing, such as it prescribes." "The proposition is a necessary preliminary, without which there can be *no legal action*, in issuing the bonds."

Recurring to the act of the legislature, we find, that it provided in Sec. 1: "The said railroad companies by their president and a majority of their directors may, *in writing*, propose to any such county, that it shall subscribe for, and take an amount of their capital stock, to be named in said proposal, at a certain price per share, and pay for the same *in such bonds* of the county as shall be *set forth* in said proposal."

The second section of the act provides for the submission of the *proposition of the company* to a vote. The other sections provides the manner of ascertaining the wishes of the voters, &c.

Section 6 provides, "That if it is found that a majority

of the qualified voters of said county, voting at the election, shall have voted for "subscription," then and in that event, upon the announcement of the vote, as herein provided, *the proposition of said company* shall be declared and held to be accepted, and the said court of county commissions are hereby authorized and required to make the subscription *voted* for in behalf of said county to the capital stock of said company *in the manner and for the amount* set forth in said application, and to deliver to the said railroad company, in payment of said subscription, bonds of the county having not less than ten nor more than twenty years to run, with interest coupons attached for *semi*-annual interest, *payable at such times and places* as may be agreed upon between the said railroad company and the probate judge of said county." It is clear, the authority—jurisdiction, if you please, conferred by this act, upon the court of county commissioners, was limited to the execution and issuance of *such bonds* as the president and directors should apply for in writing *and* a majority of the voters might vote to be issued; nothing being left to the discretion of the probate judge, in respect of such bonds, other than he and the railroad company might determine as to the times and places the bonds should be made payable.

Conceding now, "where the persons appointed by law to certify that the preliminary requisites have been complied with, do so certify, that their certificate is conclusive in favor of a *bona fide* holder;" *that* certificate is conclusive *only* to show the existence of the authority to issue only such bonds as the statute, upon compliance with such preliminary conditions, authorized them to issue. "The proposition of the railroad company was matter of substance," and the commissioners' court was the tribunal appointed by law, to determine whether this proposition was accepted by the voters; their determination of this question was and is conclusive.

This proposition, thus judicially determined to have been accepted by the voters, became the contract between the county and the company, which the commissioners' court, as

the agent of the county, were authorized to execute. If they executed or attempted to execute another and different contract than the one proposed by the company and submitted to the voters of the county, and accepted by them, they did not and could not under the statute authorizing them to act bind the county.

The test of their authority is, were the bonds declared on, "such bonds of the county as were set forth in said proposal." The "proposal" is set forth at length on page 16 of the printed record, in the Pickens' county case; * * "hereby propose to the said county of Pickens, through your honorable court, under and by virtue of the said act of the legislature, to subscribe for and take one hundred thousand dollars of the capital stock of the said railroad company at fifty dollars per share, to be paid in the bonds of said county, payable to the said railroad company or bearer; said bonds to be so payable in sums of one thousand dollars each, and due twenty years after date thereof," &c.

Of the bonds sued on, some are of the denomination of two hundred and fifty dollars and others of five hundred dollars.

Here, then, after the contract between the parties—the company and the county—had been completed, the agents of the county attempt to change the terms of that contract, thus solemnly agreed upon, and to substitute other and different bonds from those provided for in said contract.

It seems clear, being specially authorized by their principal, the county, to execute one class of bonds, the commissioners' court are without authority to bind their principal by the execution of another class of bonds.

This view is further enforced by considering the language of the act, which, after providing the denomination of the bonds shall be fixed by the proposal of the company and the acceptance thereof by the county, also provides "*times and places for the payment of the bonds*" may be fixed by the agreement between the company and the judge of probate. *Expressio unius exclusio alterius.* Nor will the suggestion

avail, that the court of county commissioners are not the agent, but "the embodiment of the will of the county;" for the statute explicitly directs that the will of the voters be ascertained as to the taking of the subscription, and the payment therefor, "*in such bonds of the county as shall be set forth in said proposal.*" (See 1st section of the act.)

The *act* provided that the will of the *voters* should be taken as to the character of the bonds they should be bound for, in the particulars, as shown by the proceedings of the commissioners' court, in which the will of the voters was set aside, and their own substituted. The county was therefore not bound to pay the bonds thus executed.

4. In the case of Greene county, the proposal of the company is set out, at length, on page 10 of the printed record. The bonds therein asked for are bonds of "one and five hundred thousand dollars each." The bonds issued are in the sum of five hundred dollars each—bonds, the issuance of which was wholly unauthorized by law.

5. Municipal bonds issued without authority of law are void in the hands of an innocent holder for value. (Town of E. Oakland vs. Skinner, 4 Otto, 255; Town S. Ottawa vs. Perkins, Id., 260, 262, 267, 269; McClure vs. Township, Id., 429; Town of Concord vs. Portsmouth Savings Bank, 2 Otto, 801.)

But plea No. 2 sets up the same facts alleged in plea No. 1—and, that to induce the qualified electors, to whom the said proposal was submitted, to vote for said proposed subscription, the said railroad company, through its officers and agents, did make various public speeches and other representations to said qualified electors, whereby it falsely and fraudulently represented to said qualified electors, that the proceeds of said proposed bonds and coupons should be solely expended in constructing said railroad in and through Pickens county; and by said representations, induced said voters to vote for said subscription; that said proceeds were otherwise wholly expended and applied to other uses; that no part of said road had been constructed in said county; that said company was

wholly insolvent, and said road had ceased to be built; and that said Richard C. Daniel, before he acquired the coupons, had notice that said representations had been made, and that said railroad company did not intend to keep, and had not kept, its said representations and promise, and the proceeds of said bonds and coupons had been or would be applied or expended for purposes wholly different from constructing said road in said county.

6. The 3d, 4th, and 5th pleas set up in substance the same facts, and severally that the coupons declared on were acquired by the said Daniel from the railroad company, and deny that Daniel is a *bona fide* purchaser without notice of the facts set up in said pleas.

This denial distinctly puts in issue the facts stated in the declaration that Daniel is a *bona fide* holder of these bonds. The sustaining the demurrer strikes this issue of fact out of the record.

In 30 Ala. R., p. 100, in Rives vs. Montgomery Plank Road Company, the court, Rice, C. J., says; "It is well settled that no one can hold an interest procured for him by the fraud of another any more than if the fraud were committed by himself. (Atwood's Adm'r vs. Wright, 29 Ala., 346; Bowers vs. Johnson, 10 Smedes & Marsh, 169; Huguenion vs. Baseley, 2 White & Tudor's Leading Cases in Equity, pt. 2, top page 64; 7 Iredell's Eq. Rep., 7; 3 ib., 219.)

"In the present case the defendant asserts that the subscription of stock by him was procured by the false and fraudulent representations of the president and one of the members of the board of directors of the company; and that in suing him on this subscription, the company is seeking to recover an interest procured through the fraud of its president and one of its directors. If this assertion of the defendant be true, his defense is complete. He certainly, then, ought to be allowed to prove the truth of his assertion. How can he possibly do so, unless he is permitted to show what that president and director said to him before he subscribed for stock, and thereupon he did subscribe?

"Whether the declarations of the president and directors were *the cause*, and the defendant's subscription *the effect*, is a question for the jury. In this point of view the declarations are facts, the effect of which in procuring the defendant's subscription is a material question in the cause. It is too clear for argument, that no court or fair-minded man can say it is unnatural or unreasonable, that such declarations of such officers (if made) should induce a man, whose property was situated on or near the line of the road held forth by those officers, to subscribe for stock. We cannot doubt that the declarations of those officers, as offered by the defendant, were relevant and admissible."

But, in the case here, the allegation is that the *company* itself made these representations, and that R. C. Daniel had notice thereof before he acquired said coupons, and that he is not an innocent purchaser. That in respect of these matters he has no better status than the railroad company, who perpetrated the fraud, would occupy if it were suing to recover the coupons.

These allegations bring this case also within the principles and reasoning applied in the dissenting opinion of Judge Walker, in the case last cited—30 Ala., 100.

The pleas therefore should have been sustained.

The Federal courts do not follow the State courts in decisions upon questions of commercial law, but I do not know of any decision of the United States courts that holds that fraud, or failure of consideration, is not a good defense to a bill of exchange in the hands of a holder with full notice of the facts.

JOHN T. MORGAN,
For Plaintiff in Error.